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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/818,940	03/28/2001	Leana Golubchik	T2315-907180	9623

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EXAMINER

DAVIS, ZACHARY A

ART UNIT PAPER NUMBER

2137

DATE MAILED: 03/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/818,940	Applicant(s) GOLUBCHIK ET AL.	
	Examiner Zachary A. Davis	Art Unit 2137	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-16 and 29 is/are allowed.
- 6) ☒ Claim(s) 1-12, 17-28 and 30-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. <u>20060301</u> . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

1. A response under 37 CFR 1.111 was received on 02 December 2005. By this response, Claims 1, 4-9, 11, 13, 15, 16, 19, 23, 25, 27, 29, and 32 have been amended. No claims have been added or canceled. Claims 1-32 are currently pending in the present application.

Response to Arguments

2. Applicant's arguments filed 02 December 2005 with respect to Claims 23-28 have been fully considered but they are not persuasive.

Claims 23-28 were rejected under 35 U.S.C. 103(a) as unpatentable over Faris et al, US Patent 6659861, in view of Boyle et al, US Patent 6138158.

Regarding independent Claim 23, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Specifically, Applicant argues that Boyle discloses that it is the link server (or proxy server) that receives a notification from a web server device and not the common destination server, citing column 7, lines 13-16. Although the Examiner does not dispute that Boyle discloses the link server receiving a notification, the Examiner respectfully disagrees with Applicant's overall argument that the

destination device does not also receive the notification. The Examiner notes that it appears that Applicant has considered only a small segment of the entirety of the cited portions of the reference (noting that the previous Office action cites not only column 7, lines 12-16 but also column 7, lines 18-27; column 5, lines 31-35; and elsewhere). The Examiner believes that Boyle discloses that, after the link server receives the notification that updated data is waiting to be retrieved (see Boyle, column 7, lines 12-16), the link server then **sends the notification to the destination device** (in this case the mobile/client device; see Boyle, column 7, lines 20-27; see also column 5, lines 31-35). Although the destination device in Boyle is not explicitly a destination server, the Examiner believes that this provides a broad teaching of sending a notification of updated data waiting to be retrieved to a destination device for which the updated data is ultimately intended. Combined with the methods disclosed by Faris, the Examiner believes that the teaching in Boyle fairly suggests sending a notification to the Primary Server (destination server) of Faris when the proxy servers are holding data to be retrieved by the destination server. Boyle further suggests that one would be motivated to make such a combination in order to decrease costs and unnecessary network traffic (see Boyle, column 3, lines 32-39).

Therefore, for the reasons detailed above, the Examiner maintains the rejections as set forth below.

Claim Objections

3. The objection to Claims 16, 29, and 32 for informalities is withdrawn.
4. Claims 5, 7, and 23 are objected to because of the following informalities:

In Claim 5, it appears that the word "having" should be deleted before "uploading" in line 2 of the claim. Further, commas should be inserted before and after the phrase "by the common destination server" in line 2.

In Claim 7, a comma should be inserted after "the step of creating" in line 2.

In Claim 23, in the phrase "uploading by the common destination server the data of a client" in line 15 of the claim, commas should be inserted before and after the phrase "by the common destination server".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The rejection of Claims 13-16 and 29 under 35 U.S.C. 112, second paragraph, as being indefinite is withdrawn.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-12, 17-28, and 30-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation “the authenticator” in lines 12-13. However, there is insufficient antecedent basis for this limitation in the claim. Specifically, the claim recites “at least one authenticator”; if there is more than one authenticator, then it is unclear to which of the more than one authenticators the limitation “the authenticator” refers. **Claims 6-9 and 12**, which depend from Claim 1, also recite the limitation “the authenticator”; it is unclear to which of the “at least one authenticator” this limitation refers if there is more than one authenticator. Similarly, **Claims 17-19, 21, 22, and 30**, also recite the limitation “the authenticator”, and Claims 13 and 29, from which the above claims depend recite “at least one authenticator”. Therefore, in the above claims, it is unclear to which of the “at least one authenticator” the limitation “the authenticator” refers if there is more than one authenticator. This renders the claims indefinite. For examination purposes, it is assumed that all references to “the authenticator” in the above claims are intended to refer to “the at least one authenticator”.

Claim 12 recites the limitation “having the authenticator send a message”. This limitation renders the claim indefinite because it is unclear what the subject of the limitation is; that is, it is not clear who or what exactly has the authenticator send the message, or who or what causes the authenticator to send the message. The Examiner has assumed that the limitation is intended to read “the at least one authenticator sending a message”, and the Examiner further suggests the claim be amended to reflect the above change.

Claim 23 recites the limitation “sending a message, which is smaller in size than the data of a client, to the common destination server to indicate that the corresponding

one of the at least one proxy server is holding data to be uploaded by the common destination server and upload data from the corresponding one of the upload proxy servers". It is not clear what the subject of the phrase beginning "and upload data" is. The Examiner recommends, for example, deleting the phrase, or inserting "to" before "upload".

Claims not specifically referred to above are rejected due to their dependence on a rejected base claim.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faris et al, US Patent 6659861, in view of Boyle et al, US Patent 6138158.

In reference to Claim 23, Faris discloses a method including providing a common destination server (Figure 2, Primary Server 100) and a plurality of upload proxy servers (Figure 2, Game Servers 150); each client sending data intended for the destination server to one of the proxy servers (column 37, lines 4-10); sending a message smaller than the data of the client to the destination server; and pulling the data held at the proxy server to the destination server (column 36, line 54-column 37, line 10).

However, Faris does not explicitly disclose that the message is an indication that the proxy server is holding data for the destination server to upload.

Boyle discloses a system in which a proxy server (Figure 1, link server device 114; see also column 5, lines 37-45, noting that link server device 114 is also referred to as a proxy server) sends a notification indicating that updated data is waiting to be retrieved (column 7, lines 12-16 and 18-27; column 5, lines 31-35) and the recipient of the notification can then retrieve the data at its discretion (column 7, lines 26-27; column 8, lines 10-13; column 5, lines 35-36). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Faris by including in a sent message a notification that data is being held for uploading, in order to reduce costs and decrease network traffic (see Boyle, column 3, lines 32-39).

In reference to Claims 24 and 26, Faris and Boyle further disclose establishing an authenticator for anticipated large amounts of data and supplying criteria for receiving data to the authenticator, including an encryption level (see Faris, column 30, lines 15-52).

In reference to Claim 25, Faris and Boyle further disclose an event identifier (see Faris, column 31, lines 6-27).

In reference to Claim 27, Faris and Boyle further disclose generating a unique identifier corresponding to data that a client intends to send to a common destination server (see Faris, column 24, lines 4-12), transmitting the identifier to an authenticator (Faris, column 36, lines 54-55), and digitally signing the identifier (Faris, column 36, lines 55-58). Faris and Boyle also disclose using the identifier to confirm that the data

has not been altered since the identifier was generated (see Faris, column 39, lines 11-19).

In reference to Claim 28, Faris and Boyle further disclose time-stamping the identifier (see Faris, column 36, lines 55-58) and confirming that the data has not been altered since being time-stamped (Faris, column 39, lines 11-19).

Allowable Subject Matter

10. Claims 13-16 and 29 are allowed.

11. Claims 1-12, 17-22, and 30-32 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

12. Because the prosecution record of the present application, as a whole, makes clear the reasons for allowance, a separate statement of reasons for indicating allowable subject matter is not required. 37 CFR 1.104(e).

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachary A. Davis whose telephone number is (571) 272-3870. The examiner can normally be reached on weekdays 8:30-6:00, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emmanuel Moise can be reached on (571) 272-3865. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2137

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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